

TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

NOTICE OF PROPOSED RULEMAKING

Early Intervention Regulations

The Department of Developmental Services (DDS) proposes to amend Title 17 California Code of Regulations, Division 2, Chapter 2, Subchapter 1 by amending Section 52000; Subchapter 2 by amending Sections 52082 and 52084; Subchapter 3 by amending Section 52109; Subchapter 5 Sections 52170, 52171, 52173, and 52175.

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action of DDS. The written comment period closes at 5:00 p.m. on July 29, 2002. Please submit any written comments to the DDS contact persons designated below by 5:00 p.m. on July 29, 2002. Both oral and written comments will be received at the public hearing.

Public Hearings

Two public hearings to receive oral and written comments are scheduled as follows:

1. July 26, 2002 at 10:00 a.m. at 714 P Street, Sacramento, California, Auditorium
2. July 29, 2002 at 10:00 a.m. at Eastern Los Angeles Regional Center, 1000 South Fremont Ave, Alhambra, California, Auditorium.

DDS requests that persons who make oral comments at the public hearing submit a written copy of their testimony at the hearings. The hearing locations have wheelchair access.

Authority and Reference

Authority: Sections 95009 and 95028, Government Code.

Reference: Sections 95014 and 95028, Government Code. Sections 303.12(b), 303.19, 303.416(d)(i), 303.510, 303.512(c)(1-2), 303.520, 303.521, 303.527(c), Title 34 Code of Federal Regulations.

Informative Digest/Policy Statement Overview

As part of California's grant application for funds under Part C of Individuals with Disabilities Education Act (Title 20 United States Code Section 1431 et seq.), DDS, as the Part C lead agency, is required to make revisions to the Early Start regulations, consistent with applicable federal regulations. The proposed changes specifically address the 1997 and 1999 revisions to 34 CFR Part 303.

In addition to changes mandatory to assure federal funding, other technical, non-substantive revisions are proposed to clarify the intent of certain Early Start regulations.

Section 52000, subsection (b) (36) has been amended to modify the definition of parent to include foster parents, when the rights of the biological parents of an infant or toddler have been relinquished or removed.

Section 52082, Title, was amended to clarify that the contents of this section address only the evaluation for eligibility process.

Section 52082, subsection (b) was amended to clarify that the contents of this section address only the evaluation for eligibility process.

Section 52082, subsection (i) was added to clarify that the eligibility process should, whenever possible, occur in a natural environment. The text was previously part of Section 52084 (e), which otherwise addresses only assessment for service planning.

Section 52084, subsection (e) was amended to exclusively address the assessment for service planning process. The information about eligibility was moved to Section 52082.

Section 52109, subsection (b) was amended to clarify that a family's private insurance is not a responsible payer for early intervention services. Also, language was added to clarify that public agencies other than those listed might have responsibility for payment for early intervention services.

Section 52109, subsection (c) was added to assure that a family's private insurance is not used to pay for early intervention services, unless the family provides informed written consent to do so.

Section 52170, subsection (c) was added to specify the time lines within which complaints regarding early intervention services must be filed with DDS.

Sections 52170, subsections (d) through (g) were renumbered due to the addition of a new subsection (c).

Section 52170, subsection (e) was amended to correct the address where complaints are filed.

Section 52171, new subsections (a) (4) (A) and (B) were added to specify the types of remedies that may be included in complaint decisions.

Section 52171, old subsection (4) was deleted, since changes to federal law and regulations mandate that State complaint decisions are final and may not be appealed.

Section 52171 (c) was added to specify procedures for responding to a complaint, when one or more issues contained in the complaint are also part of a due process hearing.

Section 52172, subsection (d) was added to clarify that if an issue is raised in a complaint that has already been decided in a due process hearing involving the same parties, then the hearing decision is binding.

Section 52172, subsection (e) was added to clarify that DDS shall resolve any complaint alleging the failure to implement a due process decision.

Section 52173, subsection (j) was added to clarify that discussion during mediation must be confidential and may not be used as evidence in subsequent due process or civil proceedings.

Section 52175, subsection (b) (5) was amended to ensure that a surrogate parent is not an employee of a state agency. Also, the subsection states that a surrogate parent is not considered an employee solely because he or she is by a state agency to serve as a surrogate parent.

Small Business Determination:

DDS has determined that the proposed regulations will not affect small business. The proposed regulations make only technical, non-substantive or clarifying changes to current regulations.

Local Mandate Determination:

DDS has determined that the proposed regulatory actions do not impose: 1) a mandate on local agencies or school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code section 17500 through 17630; 4) other nondiscretionary costs or savings imposed on local agencies; 5) costs or savings in federal funding to the state.

Assessment Statement:

DDS has determined that the proposed regulations will not affect the creation or elimination of jobs in California; the creation of new businesses or the elimination of existing businesses within California; or the expansion of businesses currently operating in California.

DDS has made an initial determination that the proposed regulations will not have: 1) a significant statewide adverse economic impact directly affecting business including the ability of California business to compete with businesses in other states; or 2) a significant effect on housing costs.

Cost Impacts on Representative Private Persons or Businesses

DDS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Alternatives Considered

DDS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DDS would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

DDS invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at the public hearings.

Contact Person

Comments and inquiries concerning the proposed action or substance of the proposed action may be directed to:

Attention: John Ellis, Community Program Specialist II
Early Start Local Support Section
Department of Developmental Services
1600 Ninth Street, Room 330, MS 3-8
Sacramento, California 95814
Email: jellis1@dds.ca.gov
Phone: (916) 654-2190
FAX: (916) 654-3255

If Mr. Ellis is unavailable, comments and inquiries concerning the proposed action or substance of the proposed action may be directed to:

Attention: Ken Freedlander, Chief
Early Start Local Support Section
Department of Developmental Services
1600 Ninth Street, Room 330, MS 3-8
Sacramento, California 95814
Email: kfreedla@dds.ca.gov
Phone: (916) 654-2760
FAX: (916) 654-3255

Availability of Rulemaking Documents

DDS has prepared and has copies ready for public review of the exact text of the proposed regulations, and Initial Statement of Reasons for the proposed regulations, and all of the information upon which the proposed regulations are based. Copies of the initial statement of reasons and text of the proposed regulations, along with all other public records, reports documentation or other material related to the proposed regulations will be contained in the rulemaking file and will be available for inspection and copying throughout the rulemaking process from the contact person at the above address. In addition, the text, Initial Statement of Reasons and other materials for this rulemaking maybe viewed over the internet at www.dds.ca.gov.

Availability of Changed or Modified Text

After the close of the comment period, DDS may adopt the proposed regulations as described in this notice. If DDS makes modifications that are sufficiently related to the originally proposed text, it will make the modified text, with changes clearly indicated, available for public comment at least 15 days before DDS adopts the regulations as revised. If the text is modified, the text may be viewed over the internet at www.dds.ca.gov. Please send requests for copies of any modified regulations to the contact persons named above.

Final Statement of Reasons

When the Final Statement of Reasons is available, it may be viewed over the internet at www.dds.ca.gov. Additionally, requests for the Final Statement of Reasons could be made to the contact persons named above.